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CONCORD, N.H.

Mr. James J. Dwyer, Commissioner  
Department of Public Welfare  
P.O. Box 11000, Concord

RE: Ms. PORTER,

In reply to your question of February 1, 1964, whether, in assuming the position of Child Accountant, you must accept from the Division of Personnel a promotional register exclusively which prevents your consideration of permanent employees the promotional employee now occupying the position, consider the fact to be ruled first in the open competitive examination, I advise as follows:

The Personnel Commission is given the duty to make such rules and regulations, and also to the approval of the Governor and Council, as it deems necessary or proper to carry out the purposes of the act which established the Commission, i.e., "A Statewide Civil Service." N. H. C. 27-A, s. 6 (1962) as amended by Laws 1960, c. 8, s. 2.

Rule 20, section 6, so made and approved by the Governor and Council provides in part:

"Present employees desiring promotion shall be given preference in appointment from the appropriate register in accordance with the provisions of Section 6 of this rule."

I am advised that the Division of Personnel has interpreted "presented" as referred to therein as "presently employed"; promotion and has ruled that preference to be given to present employees of the State when a position is to be filled by the submission to a department head of a promotional register in the same manner.

It is clear from the quoted rule that it was the intention to give a preference to one desiring promotion. Such preference is to be given "from the appropriate register in accordance with the provisions of Section 6 of this rule." Section 6 applies to a "Reemployment and Open Competitive Register" while Section 7 applies to an "Interdepartmental Competitive Register."

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GENERAL

Mr. James J. Barry, Commissioner

February 4, 1954

This ambiguity resulting from Section 6 requiring promotional preference in accordance with a register, by virtue of Section 8, which does not deal with promotions and would destroy the preference, has been interpreted by the Division as an error in naming Section 8 instead of Section 7. I am informed that they have consistently followed the practice of trying to observe the intent of Section 6 and require selection of an appointee from an interdepartmental promotional register in the first instance.

In light of the patent ambiguity of Section 6 I cannot say that the Division's interpretation and application is incorrect or unreasonable in the absence of any evidence of arbitrary or inconsistent application.

There being no such evidence I must answer your question in the affirmative.

Very truly yours,

Richard C. Duncan  
Assistant Attorney General

RCB:amj